

VIII. DISCIPLINE

Section 8.1 COMPLAINTS

(a) When information/complaint that may affect the licensure of an applicant is presented to the Board, the informant is required to present the information to the Board in signed, written form unless this creates eminent danger to the informant.

(b) The complaint is investigated following the Arkansas Administrative Procedure Act, found at Arkansas Code Annotated § 25-15-201 et seq.

(c) Following the investigation the Board may by majority vote:

(1) Close the complaint with no further action.

(2) Process a Consent Order and Resolution Agreement with the licensee that specifies conditions to be met and maintained. If the licensee fails to keep all conditions of the agreement, an Administrative Hearing will be held for the purpose of disciplinary action.

(3) Hold an Administrative Hearing for the purpose of disciplinary action.

Section 8.2 HEARINGS

(a) Any applicant or licensee who has been aggrieved by an action of the Board shall be entitled to judicial review under Ark. Code Ann § 25-15-201 et seq.

(b) Informal hearing procedures may be held when needed for resolution of problems instead of/or in addition to the formal Administrative Hearing.

(c) Adjudicative Hearings to revoke a license or permit or to impose a civil penalty are adjudicative hearings. An agency acts in a quasi-judicial capacity when it conducts an adjudicative hearing.

The Arkansas Administrative Procedure Act (APA) provides the basic framework for the conducting of adjudicative hearings. Using the APA as a framework, these rules provide detailed procedures for hearings.

These rules apply in all administrative adjudications conducted by the Counseling Board. These procedures are developed to provide a process by which the agency formulates orders (for example, an order to suspend or revoke a license to practice or to impose civil penalties).

1. PRESIDING OFFICER

The Board Chairman shall preside at the hearing or may designate one or more members of the Counseling Board or one or more examiners, referees, or hearing officers to preside at a hearing.

2. APPEARANCES

- (i) Any party appearing in any agency proceeding has the right, at his or her own expense, to be represented by counsel.
- (ii) The respondent may appear on his or her behalf.
- (iii) Any attorney representing a party to an adjudicatory proceeding must file notice of appearance as soon as possible.
- (iv) Service on counsel of record is the equivalent of service on the party represented.
- (v) On written motion served on the party represented and all other parties of record, the presiding officer may grant counsel of record leave to withdraw for good cause shown.

3. CONSOLIDATION

If there are separate matters that involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.

4. NOTICE TO INTERESTED PARTIES

If it appears that the determination of the rights of parties in a proceeding will necessarily involve a determination of the substantial interests of persons who are not parties, the presiding officer may enter an order requiring that an absent person be notified of the proceeding and be given an opportunity to be joined as a party of record.

5. SERVICE OF PAPERS

Unless the presiding officer otherwise orders, every pleading and every other paper filed for the proceeding, except applications for witness subpoenas and the subpoenas, shall be served on each party or the party's representative at the last address of record.

6. INITIATION & NOTICE OF HEARING

- (i) An administrative adjudication is initiated by the issuance by the Board of a notice of hearing.
- (ii) The notice of hearing will be sent to the respondent by U.S. Mail, return receipt requested, delivery restricted to the named recipient

or his agent. Notice shall be sufficient when it is so mailed to the respondent's latest address on file with the agency.

- (iii) Notice will be mailed at least twenty one (21) days before the scheduled hearing unless an emergency is declared.
- (iv) The notice will include:

A statement of the time, place, and nature of the hearing;

A statement of the legal authority and jurisdiction under which the hearing is to be held; and

A short and plain statement of the matters of fact and law asserted.

7. MOTIONS

All requests for relief will be made by motion. Motions must be in writing or made on the record during a hearing. A motion must fully state the action requested and the grounds relied upon. The original written motion will be filed with the agency. When time allows, the other parties may, within seven (7) days of the service of the written motion, file a response in opposition. The presiding officer may conduct such proceedings and enter such orders as are deemed necessary to address issues raised by the motion. However, a presiding officer, other than the Counseling Board, will not enter a dispositive order unless expressly authorized in writing to do so.

8. ANSWER

A respondent may file an answer no later than ten (10) days before the scheduled hearing.

9. DISCOVERY

- (i) Upon written request, the agency will provide the information designated in A.C.A. § 25-15-208 (a) (3).
- (ii) Such requests should be received by the agency at least ten (10) days before the scheduled hearing.

10. CONTINUANCES

The Board Chairman may grant a continuance of hearing for good cause shown. Requests for continuances will be made in writing. The request must state the grounds to be considered and be made as soon as practicable and, except in cases of emergencies, no later than five (5) days prior to the date noticed for the hearing. In determining whether to grant a continuance, the Board Chairman may consider:

- (i) Prior continuances;
- (ii) The interests of all parties;
- (iii) The likelihood of informal settlements;

- (iv) The existence of an emergency;
- (v) Any objection;
- (vi) Any applicable time requirement;
- (vii) The existence of a conflict of the schedules of counsel, parties, or witnesses;
- (viii) The time limits of the request, and;
- (ix) Other relevant factors.

The Board Chairman may require documentation of any grounds for continuance.

11. HEARING PROCEDURES

- (i) The presiding officer presides at the hearing and may rule on motions, require briefs, and issue such orders as will ensure the orderly conduct of the proceedings; provided, however, any presiding officer other than the Counseling Board shall not enter a dispositive order or proposed decision unless expressly authorized in writing to do so.
- (ii) All objections must be made in a timely manner and stated on the record.
- (iii) Parties have the right to participate or to be represented by counsel in all hearings or pre-hearing conferences related to their case.
- (iv) Subject to terms and conditions prescribed by the Administrative Procedure Act, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and, upon request by the agency, may submit briefs and engage in oral argument.
- (v) The presiding officer is charged, with maintaining the decorum of the hearing and may refuse to admit, or may expel, anyone whose conduct is disorderly.

12. ORDER OF PROCEEDINGS

The presiding officer will conduct the hearing in the following manner:

- (vi) The presiding officer will give an opening statement, briefly describing the nature of the proceedings.
- (vii) The parties are to be given the opportunity to present opening statements.
- (viii) The parties will be allowed to present their cases in the sequence determined by the presiding officer.
- (ix) Each witness must be sworn or affirmed by the presiding officer, or the court reporter, and be subject to examination and cross-

examination as well as questioning by the Counseling Board. The presiding officer may limit questioning in a manner consistent with the law.

- (x) When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

13. EVIDENCE

- (i) The presiding officer shall rule on the admissibility of evidence and may, when appropriate, take official notice of facts in accordance with all applicable requirements of law.
- (ii) Stipulation of facts is encouraged. The agency may make a decision based on stipulated facts.
- (iii) Evidence in the proceeding must be confined to the issues set forth in the hearing notice, unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence outside the scope of the notice, over the objection of a party who did not have actual notice of those issues, that party, upon timely request, will receive a continuance sufficient to prepare for the additional issue and to permit amendment of pleadings.
- (iv) A party seeking admission of an exhibit must provide twelve (12) copies of each exhibit at the hearing. The presiding officer must provide the opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. All exhibits admitted into evidence must be appropriately marked and be made part of the record.
- (v) Any party may object to specific evidence or any request limits on the scope of the examination or cross-examination. A brief statement of the grounds upon which it is based shall accompany such an objection. The objection, the ruling on the objection, and the reasons for the ruling will be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve the ruling until written decision.
- (vi) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony will briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.
- (vii) Irrelevant, immaterial, and unduly repetitive evidence will be excluded. Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent men and women in the conduct of their affairs,

- (viii) Reasonable inferences. The finder of fact may base its findings of fact upon reasonable inferences derived from other evidence received.

14. DEFAULT

If a party fails to appear or participate in an administrative adjudication after proper service of notice, the agency may proceed with the hearing and render a decision in the absence of the party.

15. SUBPOENAS

- (i) At the request of any party, the agency shall issue subpoenas for the attendance of witnesses at the hearing. The requesting party shall specify whether the witness is also requested to bring documents and reasonably identify said documents.
- (ii) A subpoena may be served by any person specified by law to serve process or by any person who is not a party and who is eighteen (18) years of age or older. Delivering a copy to the person named in the subpoena shall make service. Proof of service may be made by affidavit of the person making service. The party seeking the subpoena shall have the burden of obtaining service of the process and shall be charged with the responsibility of tendering appropriate mileage fees and witness fees pursuant to Rule 45, Arkansas Rules of Civil Procedure. The witness must be served at least two days prior to the hearing. For good cause, the agency may authorize the subpoena to be served less than two days before the hearing.
- (iii) Any motion to quash or limit the subpoena shall be filed with the agency and shall state the grounds relied upon.

16. RECORDING THE PROCEEDINGS

The responsibility to record the testimony heard at a hearing is borne by the agency. Upon the filing of a petition for judicial review, the agency will provide a verbatim transcript of testimony taken before the agency. If requested under FOI, copies of the transcript will be provided at a cost per page.

17. FACTORS TO BE CONSIDERED IN IMPOSING SANCTIONS

In addition to any other considerations permitted by Arkansas Code Annotated § 17-27-101 et seq. if applicable, the agency in imposing any sanction may consider the following:

- (i) The nature and degree of the misconduct for which the licensee is being sanctioned.
- (ii) The seriousness and circumstances surrounding this misconduct.

- (iii) The loss or damage to clients or others.
- (iv) The assurance that those who seek similar professional services in the future will be protected from the type of misconduct found.
- (v) The profit to the licensee.
- (vi) The avoidance of repetition.
- (vii) Whether the conduct was deliberate, intentional, or negligent.
- (viii) The deterrent effect on others.
- (ix) The conduct of the individual during the course of the disciplinary proceeding.
- (x) The professional's prior disciplinary record, including warnings.
- (xi) Matters offered by the professional in mitigation or extenuation, except that a claim of disability or impairment resulting from the use of alcohol or drugs may not be considered unless the professional demonstrates that he or she is successfully pursuing in good faith a program of recovery.

18. FINAL ORDER

The agency will serve on the respondent a written order that reflects the action taken by the agency. The order will include a recitation of facts found based on testimony and other evidence presented and reasonable inferences derived from the evidence pertinent to the issues of the case. It will also state conclusion of law and directives or other disposition entered against or in favor of the respondent.

SECTION 8.3 SUSPENSION, REVOCATION, DENIAL OF LICENSE ISSUE, DENIAL OF RENEWAL, DENIAL OF APPLICATION FOR PROCESSING

- (a) In accordance with the Arkansas Code Annotated §17-26-309 and § 25-15-201 et seq. (Arkansas Administration Procedure Act), the Board will suspend, revoke, or deny renewal of any license if the Board finds that holder thereof:
 - (1) Has been found guilty of violating any ethical or professional standard under which the license holder practices.
 - (2) Has not paid biennial renewal fee within the time stated.
 - (3) Has not satisfied the Board, by June 30 of the renewal year, with evidence of the completion of relevant professional or continued education experience.
 - (4) Has been found to be incompetent, has misused the license, or has been negligent in the rendering of counseling services.
 - (5) Has been convicted of a felony.

- (6) Has failed to follow any special directions of the Board.
- (7) Has had one's professional license/certificate revoked suspended, or under investigation by any other Arkansas Board or certifying/licensing agency or by any state Board of certifying/licensing agency.
- (8) Has failed to meet requirements of the Criminal Background Check. (Act 1317 of 1997).
- (9) Renewals from individuals who are under investigation, sanction, probation, disciplinary supervision, revocation, or rehabilitation by counseling, psychology, social work, or other related Boards or credentialing bodies will not be considered for an Arkansas license renewal until documentation from the issuing body is received that the sanctions are removed, or completed.

ALTERNATIVE SANCTIONS

(10) In addition, the Board may after a hearing, impose upon a person over whom the Board has jurisdiction the Alternative Sanctions provided by ACA 25-15-217 which include a civil penalty not to exceed \$500.00 per violation.

(11) Applications from individuals who have violations of Arkansas Code Annotated § 17-27- 313 and are pardoned by the Governor are not exempt from the requirements of Arkansas Code Annotated § 17-27-313.

If the Board finds that it has erred in the granting of a license, the Board will give written notice by certified or signature confirmation mail of intent to annul the license. The notice will allow the applicant the opportunity to meet the requirements of licensure within 30 days.

- (b) A period of suspension shall not exceed six (6) months. During the period of suspension, the licensee shall not practice counseling/therapy in the state of Arkansas, may petition for court proceedings to prohibit the unlawful practice of counseling/therapy and/or false representation as a licensed counselor or marriage and family therapist.
- (c) The Board, or any member thereof, or any citizen of the state of Arkansas, may petition for court proceedings to prohibit the unlawful practice of counseling or marriage and family/therapy and/or false representation as a licensed counselor or marriage and family therapist.
- (d) REQUIREMENT TO KEEP CURRENT ADDRESSES ON FILE

All persons holding a license issued by this Board are required to provide the Board with information so that the Board can remain in contact and provide notice of complaints and/or hearings. The licensee holder is required to provide written notice to the Board of any change in business and/or residence within ten (10) working days of the change. Service of notices of hearing sent by mail will be addressed to the latest address on file with the Board.

- (e) The application and supporting documentation will be reviewed by Board staff. The Board administrative office will inform the applicant in writing if it determines that the application is incomplete and will specify why the application is incomplete. When a completed application, a supplemental application, or the requested information is returned, the Board office will reinstate action on the application for license. If all requirements are met, the applicant will be scheduled for the oral examination.

(f) DENIAL OF LICENSE

1. If a preliminary determination is made that the application should be denied, the agency will inform the applicant of the opportunity for a hearing on the application.
2. The grounds or basis for the proposed denial of a license will be set forth in writing by the agency. Any hearing on the denial of a license will be conducted in accordance with ACA § 25-15-208 and ACA § 25-15-213, and unless otherwise provided by law, the applicant has the burden of establishing entitlement to the license.

(g) SUSPENSION, REVOCATION, ANNULMENT OR WITHDRAWAL

1. Prior to the entry of a final order to suspend, revoke, annul or withdraw a license, or to impose other sanctions upon a licensee, the agency will serve the licensee a notice of hearing in the manner set out in Arkansas Code Annotated § 25-15-208 and Rule VII (G).

2. The agency has the burden of proving the alleged facts and violations of law stated in the notice

(h) EMERGENCY ACTION

1. If the agency finds that the public health, safety, or welfare imperatively requires emergency action and incorporates that finding in its order, the agency can summarily suspend, limit, or restrict a license. The notice requirement in h (1) does not apply and must not be construed to prevent a hearing at the earliest time practicable.

2. Emergency Order: An emergency adjudicative order must contain findings that the public health, safety, and welfare imperatively require emergency action to be taken by the agency. The written order must include notification of the Written Notice. The written emergency adjudicative order will be immediately delivered to persons who are required to comply with the order. One or more of the following procedures will be used:

- (i) Personal Delivery;
- (ii) Certified mail, return receipt requested, to the last address on file with the agency;
- (iii) First class mail to the last address on file with the agency;
- (iv) Fax notice may be used as the sole method of delivery if the person required to comply with the order has filed a written request that the Board orders be sent by fax and has provided a fax number for that purpose;
- (v) Oral notice. Unless the written emergency order is served by personal delivery on the same day that the order issues, the Board shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

1. Unless otherwise provided by law, within ten (10) days after emergency action taken pursuant to paragraph 8.2 (4) of this rule, the agency must initiate a formal suspension or revocation proceeding.

(i) VOLUNTARY SUSPENSION OF LICENSE

The licensee, in lieu of formal disciplinary proceedings, may offer to surrender his or her license, subject to the agency's determination to accept the proffered surrender, rather than conducting a formal disciplinary proceeding.

(j) DUTY OF A SANCTIONED PROFESSIONAL

In every case in which a professional's license is revoked, suspended, or revocation, suspension, or surrender, do the following:

- (1) Return his or her license and any license pocket cards to the agency's office;
- (2) Notify all of his or her clients in writing that his or her license has been revoked, suspended, or surrendered;
- (3) Notify all clients to make arrangements for other professional services, calling attention to any urgency in seeking the substitution of another licensed professional;
- (4) Deliver to all clients any papers or property to which they are entitled, or notify the client of a suitable time and place where the papers and other

property may be obtained, calling attention to any urgency for obtaining the papers or other property;

- (5) Refund any part of the fees paid in advance that have not been earned;
- (6) Keep and maintain a record of the steps necessary to accomplish the foregoing;
- (7) File with the agency a list of all other state, federal, and administrative jurisdictions by which he or she is licensed. Upon such filing, the agency will notify those entitled of the revocation, suspension, or surrender; and
- (8) The professional shall, within thirty (30) days of revocation, suspension, or surrender of the license, file an affidavit with the agency that he or she has fully complied with the provisions of the order and completely performed the foregoing or provide a full explanation of the reasons for his or her non-compliance. Such affidavit shall also set forth the address where communications may thereafter be directed to the respondent.

(l) REINSTATEMENT AFTER SUSPENSION

- 1. An order suspending a license may provide that a person desiring reinstatement may file with the Counseling Board a verified petition requesting reinstatement.
- 2. The petition for reinstatement must set out the following:
 - (i) That the individual has fully and promptly complied with the requirements of section VIII (K) of these rules pertaining to the duty of a sanctioned professional;
 - (ii) That the individual has refrained from practicing in this profession during the period of suspension;
 - (iii) That the individual's license fee is current or has been tendered to the agency;
 - (iv) That the individual has fully complied with any requirements imposed as conditions for reinstatement.
 - (v) Any knowing misstatement of fact may constitute grounds for denial or revocation of reinstatement.
- 1. Failure to comply with the provisions of Section 8.3 (K7 & K8) of the Rule precludes consideration for reinstatement.
- 2. No individual will be reinstated unless the Board of Examiners in Counseling approves reinstatement by majority vote.

(m) RE-LICENSURE FOR REVOKED OR SURRENDERED LICENSE

- 1. No individual who has had his or her license revoked or who has surrendered his or her license will be licensed, except on petition made to the agency. The application for re-licensure is not allowed until at least five years after the revocation or surrender of license took effect.

2. The applicant bears the burden of proof that he is rehabilitated following the revocation or surrender of his license, that he can engage in the conduct authorized by the license without undue risk to the public health, safety, and welfare, and that he is otherwise qualified for the license pursuant to Arkansas Code Annotated § 17-27-101 et seq and Rules in effect the date the application for re-licensure is received.
3. The agency may impose any appropriate conditions or limitations on a license to protect the public health, safety, and welfare.
4. The agency may require that the person seeking re-licensure take licensing examination.
5. The agency may require that the person seeking re-licensure have supervision for a specified time and ratio.